

Intermediary Foundation of the Universal Declaration of Human Rights

REGISTERED POST

Minister of Justice and Security
authorized on behalf of the State of the Netherlands
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Mierlo, November 7, 2022
concerns: for your information
His Excellency Yesilgöz-Zegerius ,

The Cabinet

An image of a well-functioning Dutch constitutional state, with high perceived judicial independence, and that the independence of judges highly regarded by citizens and the business community. The government endorses the importance of citizens and the business community being able to rely on the independence of judges and the judiciary. ⁸ European Justice Scoreboard 2021 (<https://ec.europa.eu/info/files/eu-justice-scoreboard-2021>). 8 October 1, 2021 BZDOC-870508676-26 Ministry of Foreign Affairs Cabinet assessment of the European Commission's Rule of Law Report 2021

IFUD or Human Rights

There is an error of misrepresentation about the implementation and operation of the Dutch rule of law by European Justice Scoreboard 2021, the cabinet adopts this misrepresentation.

Legal position of the citizen vis-à-vis the State

Often people are not aware of the vulnerability of their position when they are involved in a legal conflict against the State with the various chain partners in order to obtain their rights. The establishment of the established order of the government who, together with their chain partners, want to protect this system and consciously maintain it. The litigants object but quickly become entangled between complaints bodies that

failure to function, reports and forms, a legal battle of attrition, the heavy burden of proof, the debilitating unilateral legal practice and legal wrangling up to the Supreme Court. This is how these poor victims are mangled in a degrading way and undressed, which often frustrates housemates, these inexperienced fellow citizens quickly lose sight of the steps to be taken and their legal position. A victim of this practice has virtually no chance of obtaining recognition and subsequently any rights . This practice leads to a sickening exhaustion and traumatization.

Ruling class

The law – including criminal law – should primarily be there to protect the powerless. In the Netherlands this is exactly the other way around . The law protects and benefits the political and economic ruling class within the State. The law is a monopolitan instrument of power of the establishment with its own State of rulers within that State.

Slapp's

As soon as whistleblowers point a finger at it, the system closes hermetically Every attack on the State and the system is immediately blocked by the Public Prosecution Service and the judges. The government often sidelines political opponents and human rights defenders by medicalizing a conflict with the government. Brussels, 27.4.2022 COM(2022) 177 final 2022/0117 (COD) Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of persons involved in public participation against manifestly baseless or abusive legal proceedings ("strategic public participation litigation")) (SWD(2022) NL 117 final } NL

Establishment of power

"maintaining the status quo "

The apparatus of the established establishment of power within the government in The Hague together with the tentacles of big business wielding incredible power in government, media, academia, the military and banks are above electoral interests. This group will never allow a situation to arise in which their power loses its advantages to that of the democratic one.

Denial

Letter 3 September 2002 from the Minister of the Interior and Kingdom Relations, also on behalf of the Prime Minister, also the Minister of General Affairs, and the Minister of Justice to Prof. dr. mr. AQC Tak : *"it is not clear what is meant by the "established order"* , (source: National Ombudsman Report Date: August 24, 2004 Report number: 2004/328).

In theory and practice, Tak concluded, among other things, that the system of legal protection of citizens against the government has taken on alarming proportions. The Council of State in particular has to suffer in this respect (book "De Maastrichtse School" 2002).

The establishment is generally understood to mean: "the established order", or the group of persons who control the entirety of institutional, political, cultural, legal and economic levers, and who naturally also wish to perpetuate this power. It is thus closely related to elites and circles in which its members frequent each other (Masonic lodges, exclusive clubs, all kinds of lobbies), source: wikipedia.org.

The principle of "equality of arms" assumes that both the defense and the claimant with the same file and with the same resources.

With reference to the letters previously sent to you:

-January 11, 2022

-September 6, 2022

IFUD or Human Rights
Chairman
J. P. van den Wittenboer



Dutch government assessment of the European Commission's 2020 Rule of Law Report

Parliamentary document | 08-12-2020

Letter of 30 October 2020 from the Minister of Foreign Affairs, the Minister of Justice and Security, the Minister of the Interior and Kingdom Relations, the Minister for Legal Protection and the Minister for Primary and Secondary Education and Media to the House of Representatives on the government assessment of the European Commission's 2020 Rule of Law Report

In her Political Guidelines, Ursula von der Leyen, the President of the European Commission, announced that, on taking office in December 2019, she would introduce a new Rule of Law Mechanism. After all, the European Union is not only an economic body, it is also a community of values in which respect for democracy, fundamental rights and the rule of law is essential. Any erosion of this respect jeopardises the legal, political and economic foundations of the Union and hence the mutual trust that is required for cooperation. The consequences of this are evident in the Netherlands, for example with regard to judicial cooperation with Poland. Respect for the rule of law is also crucial in fields such as the internal market, climate policy and Schengen. It is therefore vital to identify problems relating to the rule of law in member states at an early stage, and to work together to find solutions by means of constructive dialogue, with enforcement action being called for where any member state violates rule of law principles.

The aim of [the first annual report on the rule of law in the Union and the member states](#), which was published by the European Commission on 30 September 2020, is to promote the rule of law in the member states and to prevent problems from arising or worsening by measuring all member states by the same rule of law standards. The Commission employed 43 indicators, grouped in four pillars: the justice system, the anti-corruption framework, media pluralism, and other institutional checks and balances. Over the next few years, the Commission will probably refine and, where necessary, expand these pillars. A constructive dialogue about the four pillars, both during the preparation process and after publication of the report, will make it possible to share best practices and potential solutions to rule of law problems, and will raise awareness of the importance of upholding the rule of law. The annual report is essentially a preventive instrument aimed at supplementing the wider range of instruments that serve the Union, including enforcement instruments such as infringement proceedings and the article 7 procedure. The government will continue to work with like-minded member states to ensure that EU instruments are deployed to the full and that the enforcement instruments also continue to be used consistently where necessary. As Parliament is aware, the government is also striving, in the framework of the negotiations on the Multiannual Financial Framework, to guarantee effective conditionality with regard to compliance with the principles of the rule of law.

The report is the outcome of a process in which the Commission involved the member states, civil society and professional organisations active in the field of the rule of law. On 8 May 2020, for example, the government submitted to the Commission its contribution to the country chapter on the Netherlands. [This input was then shared with both Houses of Parliament on 20 May 2020](#). A number of Dutch civil-society and professional organisations also delivered written contributions. In addition, the Commission made a virtual country visit to the Netherlands, during which it talked to the responsible ministries, the Council for the Judiciary, and professional and civil-society organisations such as the Whistleblowers Authority. The government is pleased that the Commission involved civil society as well as member states in drawing up the annual report.

After publication of the report, it is important for it to be followed up where necessary. This should be done at national level in the first instance, with local authorities, civil society, professional organisations and universities all taking part. However, discussion at European level is also required, since the rule of law is a shared responsibility of the EU institutions and the member states. The government is therefore pleased that the German Presidency has launched an initiative on this issue. On 13 October 2020, the first discussion of the report took place as part of the General Affairs Council's annual rule of law dialogue, focusing on a horizontal discussion of general developments. The first five country chapters will be on the agenda for the General Affairs Council on 10 November 2020, when Belgium, Bulgaria, Czech Republic, Denmark and Estonia will be the first member states to undergo a rule of law peer review. The plan is then for five more member states to go through a country-specific dialogue under each Presidency in turn. The agenda for the Justice and Home Affairs Council on 3-4 December 2020 includes a discussion on the legal aspects of the rule of law, based on the valuable insights offered by the annual report. In the government's view, it is important that the most relevant Council configurations are able to accept their responsibility in this connection and help to strengthen the rule of law. The annual report also provides a basis for the government to continue the debate on the rule of law in bilateral contacts with member states and to discuss any concerns.

The first point addressed in the government's written response to the annual report is the wider horizontal developments relating to the rule of law outlined in the preamble to the report. The government goes on to examine the country chapter on the Netherlands, with reference to each of the four pillars referred to above. In response to the request of 9 October 2020 from the Senate committees on European Affairs and on Justice and Security for an assessment of the country chapters on the member states where democracy and the rule of law are under pressure, the government intends to consider specific country chapters briefly in the relevant annotated agendas preceding the General Affairs Council in which a country-specific dialogue is due to be held with certain member states. It is also the case that the concerns about Poland and Hungary expressed by the Commission in the report partly overlap with the article 7 procedures against those countries. The Presidency plans to put new hearings for both countries on the agenda for December. As usual, the government will use the annotated agenda for the December General Affairs Council to discuss the situation and the government's position in more depth. In addition, the government's position concerning the justice-related aspects of the rule of law can be raised in the framework of the JHA Council.

Response to the horizontal rule of law developments in the Union

The Commission notes that member states' constitutional, legal and political systems generally reflect high rule of law standards, but that at the same time serious shortcomings which are testing the rule of law have become evident in some member states. The government reviews these shortcomings below, with reference to the four pillars discussed in the report: the justice system, the anti-corruption framework, media pluralism, and other institutional checks and balances.

Justice systems

The Commission notes that the functioning of the justice system is high on national political agendas. As the Commission rightly points out, the organisation of justice thus falls primarily within the competence and responsibility of member states themselves. However, when exercising this responsibility, the member states must respect the rule of law principles enshrined in the EU treaties, the European Convention on Human Rights (ECHR) and other instruments. For example, national courts must ensure that the rights and obligations of citizens and businesses which stem from Union law are effectively enforced. The independence of the judiciary is crucial for effective legal protection in all cases.

The Commission stresses that a number of member states, including Ireland, Finland and Luxembourg, are working on reforms to strengthen judicial independence and to reduce the influence of the executive or the legislature on the judiciary. However, serious concerns exist about judicial independence in several member states, such as Poland and Hungary, leading for example to infringement proceedings and the application of the procedure under article 7 of the Treaty on European Union. The Commission also mentions political attacks and media campaigns, and sometimes even unjustified disciplinary measures, against judges and prosecutors.

In the Commission's view, digitalisation of national justice systems is an EU-wide challenge. It notes that the COVID-19 pandemic has given an extra impetus to digitalisation efforts.

The government agrees with the Commission's analysis and acknowledges its concerns about the independence, quality and efficiency of some member states' justice systems. Any undermining of judicial independence is an attack on the core of the rule of law. Accordingly, the government is pleased to note the Commission's intention to make full use of its powers as guardian of the Treaties to call member states to order, including by means of infringement proceedings before the Court of Justice of the European Union. This does not relieve member states where the rule of law functions properly from the obligation to maintain constant vigilance and to take steps to strengthen the rule of law where necessary. The government will continue to call attention to this point at European, multilateral and bilateral level.

Anti-corruption framework

Fighting corruption is essential to the functioning of and trust in the state, public authorities and the economy at all levels, and thus rightly forms the second pillar referred to in the annual report. Alongside a strong rule of law system, barriers should be erected against corrosive crime. This is also important in protecting the financial interests of the Union and its member states. An effective anti-corruption framework requires not only the existence of anti-corruption legislation and its enforcement by an independent justice system, but also sufficient administrative and judicial capacity, as well as the political will for enforcement measures where necessary. The Commission observes that the key is effective implementation and enforcement of national anti-corruption strategies that are already in place or are currently being developed in a number of member states. Investigative authorities must therefore be able to carry out their work independently and effectively, with adequate funding, human resources and technical capacity. This also applies to corruption at the highest political levels. The murder of two investigative journalists in Malta and Slovakia provoked widespread public outrage. Steps are being taken in both countries to reform their anti-corruption policies.

The government agrees with the Commission's findings on the need for an effective anti-corruption policy, in which prevention and enforcement complement each other. If citizens and businesses are to have confidence in the rule of law, it is crucial for the state to be characterised by transparency, integrity and freedom from corruption, for the expenditure of public funds to be in good hands and for abuses to be punished. Moreover, estimates of fraud involving EU funds range from hundreds of millions to a billion euros annually. Against this background, the European Public Prosecutor's Office has an important role to play in improving the protection of the Union's financial interests against crime.

Media pluralism and media freedom

Media pluralism and media freedom are key enablers for the rule of law, democratic accountability and the fight against corruption. The Commission's first annual report focuses primarily on the independence of the media regulatory authorities, transparency of media ownership, state advertising, the safety of journalists and access to information. The Commission intends to address other relevant topics in this field, such as the role and independence of public service media, in future years.

The Commission observes that the independence of media authorities is established by law in all member states, but that the risk of politicisation or under-resourcing is nevertheless present in some. While some member states have effective legislation on transparency of media ownership, such legislation is more or less non-existent in others. State advertising can be an important source of support to media, but fair and transparent rules are essential. Many member states still lack specific legislation on this subject. There are also concerns about political influence over the media, which is expressed in various ways. Specific examples of this are detailed in several country chapters. Although all member states have generally enshrined the right of access to information in their constitutions or in legislation, here again there is room for improvement in certain areas, for example by removing obstacles to obtaining government documents. Lastly, the Commission points out that the work of journalists in a number of member states is being made increasingly difficult or even impossible by intimidation, threats and smear campaigns. Some member states have developed good practices to support and protect journalists.

In the government's opinion, there can be no question that freedom to gather news and hence also media freedom and pluralism are essential for a healthy democracy governed by the rule of law. Constant vigilance is required to ensure that the media can do their work

freely and independently. Member states have a responsibility not only to provide a legislative framework for this but to guarantee genuine protection for the position of journalists in practice.

Other institutional issues linked to checks and balances

Institutional checks and balances are inextricably linked to the proper functioning of the rule of law, since they ensure that the state's power is subjected to democratic scrutiny, either by parliament or by civil society. The Commission is therefore right to conclude that strengthening the resilience of institutional checks and balances is essential for safeguarding the rule of law. Conversely, attempts to undermine the position of civil society should always be considered as a warning sign with regard to the rule of law.

Fostering public and parliamentary debate on the rule of law can enhance awareness of the importance of adequate checks and balances. In this connection, the Commission mentions as an example the policy debates in the Dutch Senate and House of Representatives in which the rule of law regularly features. The report also expresses concerns about excessive use of emergency legislation and the absence of meaningful consultation with parliament and stakeholders. Lastly, the Commission stresses the importance of a favourable environment within which civil society can play its valuable role. Initiatives are being developed in a number of member states to enhance this role further. However, in some member states, civil society's role is being undermined by restrictive legislation or hate speech directed at LGBTI+ organisations, for example.

The government agrees with the Commission's analysis that properly functioning institutional checks and balances in the Union are essential for the rule of law. That the political, legal and constitutional context differs from one member state to another is evidence of the Union's diversity. However, it must be beyond dispute that legitimate differences cannot be permitted to result in any erosion of respect for the rule of law and democratic norms.

Response to the country chapter on the Netherlands

The government would like to begin by expressing its satisfaction at the general picture that emerges from the country chapter on the Netherlands, which reveals a country where the rule of law is robust and checks and balances function properly. As with every member state, the Commission also points to a number of areas where there is room for improvement. The government will examine these areas closely and take action where necessary. The government will deliberate on the follow-up at national level and remains open at all times for dialogue with both Houses of Parliament and with civil society, since the capacity for critical self-reflection forms part of a vigorous European approach to the rule of law. The Minister of the Interior and Kingdom Relations will discuss this in more depth in her response to the report on strengthening the rule of law by the Council for Public Administration (ROB) and to the reflections on the rule of law in the Council of State's most recent annual report, which she and the other government members concerned will send to both Houses of Parliament as soon as possible.

Pillar I – Justice system

The report gives the Netherlands a positive assessment, with high perceptions of judicial independence, effectiveness of the legal system and focus on. Given the importance of this issue, the government maintains a constant focus on strengthening the independence of the courts and the quality of justice. The Commission mentions several examples in this context.

To take one example, the Council for the Judiciary, in consultation with representatives of the courts, the universities and the legal profession, has drawn up a which is currently being implemented in the courts. The aim of the code is to guarantee that cases are allocated to judges on the basis of objective standards. This is relevant to the right to a fair trial. In addition, further to a recommendation from the National the government has announced plans to Supreme Court justices. The government shares the Commission's view that the forthcoming Kingdom bill on this subject is a positive development. The same applies to the appointment of members of the Council for the Judiciary and court management boards. There has been criticism of the limited influence exerted by judges over the appointment procedure for members of court management boards. Having regard to the recent advisory report by the Council of State, the government and the Council for the Judiciary will examine ways of improving the appointment procedures for court managers. Another example is the

statutory . The Commission states that the government and the Council for the Judiciary will examine ways of improving the appointment procedures for court managers¹. Another example is the statutory power of the Minister of Justice and Security to issue specific instructions to the Public Prosecution Service, which is hedged around with appropriate safeguards to protect prosecutorial independence. The Commission states that these safeguards, combined with the fact that the power to issue instructions in individual cases has never been used, appear to mitigate any potential risk for the independence of the prosecution.

Quality

The Commission's report addresses a number of aspects of the quality of the Dutch justice system which are currently undergoing developments.

Reform of legal aid is expected to be completed by 2024. The Commission draws attention to criticisms of the proposed reforms of the publicly funded legal aid system, particularly with regard to safeguarding access to justice and to the available funding. The legal aid reforms will bring the present system up to date so as to be able to guarantee access to justice in the future, as in the past. In the government's view, successful reform requires all stakeholders to be involved. The government is therefore pleased to note that, after a brief interruption last year, the joint dialogue on the design of the new system is now being conducted in a constructive manner. The reforms will take place within existing budgetary frameworks, with the system benefiting from the gains generated by the new measures. The transition period is also receiving appropriate consideration: for example, lawyers and mediators will again receive a temporary allowance in 2021 to enable them to change over to the new system in a responsible fashion. Various measures have also been introduced to give as much assistance as possible to the legal profession during the COVID-19 pandemic.

The Commission also states that there remains room to improve the digitalisation of the justice system, specifically in relation to submitting cases online, transmitting summonses and monitoring the progress of proceedings. Since the government regards digitalisation as essential for effective access to justice, it is taking steps in various areas to enhance the digitalisation of processes in the legal system. The use of digital documents is a good example. In the majority of criminal cases, trials are already based on electronic documents. In civil and administrative law, it is expected that within a few years proceedings in most cases will be conducted digitally and it will be possible to lodge and follow cases online. Documents can also be exchanged with the courts online in cases involving receivership and bankruptcy. This will be extended over the next few years.

In addition, the Commission acknowledges the value of small-scale projects aimed at fostering access to justice. The programme designed to make the administration of justice effective for society at large includes experiments on various themes such as debt, families with multiple problems and easy access to the courts, some of which have already been given a positive evaluation. The government supports these initiatives. The Administration of Justice Experiments (Temporary Measures) Act will be helpful in this connection. The House of Representatives will be informed of the status of this programme before the debate on the budget for the Ministry of Justice and Security.

The Commission's report also considers the impact of COVID-19 on organisations in the criminal justice system. It raises concerns in particular about the effective safeguarding of the right to a fair trial and the quality of justice and the backlogs of criminal cases caused by the pandemic. The government is aware of these issues but does not acknowledge the concerns. The COVID-19 pandemic has necessitated far-reaching measures that have imposed restrictions on the administration of justice. Backlogs built up because many hearings had to be postponed or conducted online. In taking the measures necessary in the interests of public health, fundamental rights and the principles of democracy and the rule of law have consistently been safeguarded. Over the past few months the justice system has made every effort to get its work done in spite of restrictive measures. For example, all the organisations concerned have taken measures, individually and in cooperation with the government, to put in place provisions such as screens, one-way flow systems, renting additional space and better video conferencing facilities. The government has made funds available for these purposes. Agreement has been reached on a system-wide approach to eliminating the backlogs of criminal cases that have arisen because of measures relating to the pandemic.²

Efficiency

According to the report, the Dutch justice system is characterised by a consistently high level of efficiency. The government is satisfied with this assessment. Nevertheless, the Council for Public Administration has expressed concerns about the excessive workload affecting judges and public prosecutors. The government takes these concerns seriously and is continuing to discuss them with the Council for the Judiciary and the Board of Procurators General. Various measures are being taken to lighten the workload, including projects to eliminate backlogs and the recruitment of additional judges. In addition, the Public Prosecution Service is being afforded the opportunity to increase its capacity on a temporary basis as a way of disposing of the work that has built up as a result of measures taken to suppress coronavirus.

There is also still room for improvement in the functioning of the criminal justice system and in cooperation and coordination between its various elements. To this end all the organisations involved are developing an improvement plan for the criminal justice system.³

Pillar II – Anti-corruption framework

The Commission states that the Netherlands is perceived as one of the least corrupt countries in the world and that there is a strong integrity culture in the public administration. The legal framework to fight corruption is in place. The Commission refers to recommendations deriving from evaluations by bodies such as the Council of Europe's Group of States against Corruption (GRECO). When further reports by these bodies are published, the House will be informed of how these recommendations have been followed up.

The Commission notes that 'there is a strong integrity culture in the public administration. The legal and institutional framework to fight corruption is in place and there are several initiatives under way to further strengthen the framework to detect, investigate and prosecute corruption'. The report refers, for instance, to the recent evaluation of the Whistleblowers Authority Act. The Senate and the House of Representatives will shortly be informed about the supplementary evaluation report on the Act, thus completing the evaluation process. The investigators who conducted the evaluation concluded that legal protection for whistleblowers and the resolving of societal abuses could be improved in several respects, for example by ensuring that all organisations have a good-quality internal reporting procedure and apply it properly in practice⁴. The Minister of the Interior and Kingdom Relations will shortly submit her substantive response to the evaluation of the Whistleblowers Authority Act to the Senate and the House of Representatives. This may lead to legislation amending the Act. In any event, the current Bill to implement the EU whistleblowers directive reverses the burden of proof, thus affording whistleblowers better protection. The aim is for the legislation implementing the whistleblowers directive to enter into force in December 2021.

Integrity is essential for the state to function properly. The Commission's report refers to the Central and Local Government Personnel Act (Ambtenarenwet) 2017. Under section 4 of this Act, all public sector employers (central government, municipal and provincial authorities and other legal persons constituted under public law) are obliged to pursue an integrity policy designed to foster ethical conduct by public servants, to draw up a code of conduct for public administration and to publish an annual audit of their integrity policy.

The Central Government Code of Conduct (Gedragcode Integriteit Rijk, GIR) applies across central government, providing civil servants with a framework for ethical conduct and containing information on important matters such as gifts and invitations, private use of government funds, financial interests, outside activities, changing jobs, contact with lobbyists, purchasing, hiring and tendering, involvement in independent investigations and information sharing and data handling. The Interministerial Platform on Integrity Management (IPIM) plays an important role in the development of integrity policy within central government.

The report also refers to the first and second parts of the bill to promote integrity and ethical conduct on the part of local authority personnel. The first part provides that a certificate of conduct (VOG) must be a requirement for the appointment of local authority personnel and clarifies provisions on conflicts of interest. The first part is already before the House of Representatives and in November a memorandum of reply in response to written questions will be sent to the House. The second part of the bill makes a risk analysis

compulsory for candidates for local and provincial authority posts, requires mayors to be screened and extends disqualification from voting in the case of certain criminal offences. In all probability the second part of the bill will enter the consultation phase in November.

The report refers to issues on which GRECO made recommendations in its fifth evaluation round, which addressed preventing corruption and promoting integrity in central governments (top executive functions) – part A – and law enforcement agencies – part B. Part A concerned such matters as conflicts of interest, consultation and training, contacts with lobbyists and post-employment restrictions. The government is working on proposals to implement these recommendations. Both Houses will be informed of these in due course.

The report also mentions the Political Parties Bill, which will contain rules on transparency with regard to the funding of local parties and local branches of national parties. It is hoped that consultation on this bill will begin at the end of 2020. The government also wants to see greater transparency concerning gifts to legal persons, since the bill to amend the Political Parties (Financing) Act contains a proposal to publish the names of the natural persons behind such legal persons (the beneficial owners).

Various authorities, each with its own field of work, are responsible for the investigation of corruption offences and the prosecution of offenders. The National Criminal Investigation Department (Rijksrecherche) and the National Public Prosecutors' Office are responsible for investigating and prosecuting domestic bribery of public officials while the Fiscal Information and Investigation Service (FIOD) and the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation cover domestic bribery not involving public servants and foreign bribery. The report also mentions various investments made in recent years to equip these bodies as well as possible, such as the FIOD's Anti-Corruption Centre and the new central register on bribery of public officials. In connection with money laundering, it also refers to Dutch initiatives designed to tackle corruption in the financial sector.

The Commission refers explicitly to areas where the Netherlands is still following up recommendations in part B of GRECO's fifth evaluation round, including the planned new legislation on screening police officers and external consultants. This bill is well advanced. Two anti-corruption evaluations are currently under way: both the OECD Working Group on Bribery and the United Nations are conducting peer reviews of the Netherlands in connection with the implementation of the relevant international instruments. The government expects to use the recommendations from these evaluations as the basis for further improvements in the Netherlands' approach to the investigation and prosecution of corruption. Parliament will be informed on this in another context.

Pillar III – Media pluralism

The report observes that the Netherlands has a long tradition of media pluralism that is firmly anchored in both legal and institutional terms. ➔ [The Media Pluralism Monitor](#) assessed the independence of the media in 2018 and 2019 for the most part as low risk. A change in the appointment procedure for the Media Authority, the supervisory body⁵, is helping to reduce the risk to media pluralism even further.

The Media Pluralism Monitor assessed the transparency of media ownership in the Netherlands at medium risk in the medium term, because of the absence of media-specific legal provisions ensuring the disclosure of ownership details to the public. These details are, however, available through the Media Authority and in Chamber of Commerce registers. Stakeholders have indicated that such transparency is all the more important because media ownership is highly concentrated, particularly in respect of the press. This subject was raised in connection with the implementation of Directive (EU) 2018/1808 and the government sees no reason at present to make the provision of further information obligatory in order to make the ownership structure of media organisations more transparent.

The absolute grounds for denial of access to documents embodied in the Government Information (Public Access) Act ➔ [raise questions with the Commission as to their conformity with the principles of proportionality and necessity](#). The government would respond as follows. First, as the absolute grounds for denial of access are listed restrictively, they apply only where necessary. This interpretation has been confirmed by case law. Second, a

determination that an absolute ground for denial applies in a particular case may change over time, such that the ground is no longer applicable. Third, it follows from European Court of Human Rights (ECtHR) case law that restrictions on access to documents may be imposed in the public interest, provided the right of access to the courts is not fundamentally eroded, the restrictions imposed serve a legitimate purpose and the requirement of proportionality is fulfilled⁶. The Dutch administrative courts offer legal protection against a decision not to disclose documents. Under section 8:29 of the General Administrative Law Act (Algemene wet bestuursrecht), an administrative court handling such an application for review is competent to take cognizance of documents that have not been made public in order to investigate and decide whether a decision not to disclose the documents in question can stand up in law. The Dutch administrative courts also assess such cases in the light of the ECHR.

The report states that there is an extensive framework for the protection of journalists. Media workers have occasionally been confronted by threats, both online and offline. To that end a protocol on the safety of journalists (Protocol PersVeilig) was introduced, which is considered as a good practice by media experts. Some concerns are expressed in the report about the Intelligence and Security Services Act (WIV) as amended, on the grounds that the Act could undermine the protection of journalists' sources. However, the protection of sources was taken into account in the parliamentary debate on the Act. Following the ECtHR judgment in the case of *Telegraaf Media v. the Netherlands* of 22 November 2012 (case no. 39315/06), section 30, subsection 2 of the WIV 2017 lays down that permission from The Hague District Court is required before the intelligence and security services use special powers against a journalist, the exercise of which may lead to their obtaining information on the journalist's source. The exercise of such powers is monitored by the independent Review Committee on the Intelligence and Security Services (CTIVD). The government therefore takes the view that the WIV 2017 affords sufficient protection for journalists' sources, in accordance with the ECtHR's case law. In 2019, the Council of Europe Platform to promote the protection of journalism and safety of journalists published two alerts for the Netherlands. ➔ [An official response by the Netherlands to both alerts was published on the platform.](#)

Pillar IV – Other institutional issues related to checks and balances

The last section of the country chapter on the Netherlands describes other institutional issues related to checks and balances, emphasising the important role of independent authorities and civil society in the Dutch checks and balances system. In this connection the Commission states that before new legislation is enacted it is standard practice to conduct an impact assessment and to consult stakeholders, including the public by means of an open internet consultation. The Commission adds that respect for fundamental and constitutional rights is guaranteed in several ways. In this context, the report observes that although the Netherlands does not have a constitutional court, Dutch courts may review legislation in the light of directly effective treaties. Therefore, legislation can, in practice, be reviewed for compatibility with fundamental rights. The report also emphasises the role of the Netherlands Institute for Human Rights and the National Ombudsman, and points out that the government has a policy of pursuing a dialogue with civil society and making information accessible to citizens.

Lastly, the report adds that the rule of law is a focus of attention in both political debate and in society at large. The examples mentioned are the regular debates in the Senate on the state of the rule of law and the conference on the rule of law in the 21st century held in the House of Representatives in January 2020. The Commission states that initiatives of this kind facilitate exchanges of views on the rule of law and help to raise awareness of the subject.

The government appreciates the Commission's report on this and the other matters and endorses the analysis laid out in the last section. The principle of the rule of law is one of the foundations of the Dutch polity. Formal and informal checks and balances are integral to a state governed by the rule of law. The Commission concludes that the Netherlands' system of checks and balances functions well, that full consideration is given to civil society and that the rule of law occupies an important place in public debate.

The government views these conclusions not as a reason to rest on its laurels, but as an impetus to continue in its efforts to sustain the rule of law and the associated checks and balances. In this regard the government would point to the National Action Plan on Human Rights that was published at the end of 2019⁷ and to the response (referred to above) to the ROB's report on strengthening the rule of law, which the Minister of the Interior and Kingdom Relations and the other members of government most closely concerned will submit to both Houses as soon as possible.

Notes:

[1]: See also the letter to the House of Representatives of 7 October 2020 on the report of the Advisory Division of the Council of State on the appointment of court managers.

[2]: See also the letter to the House of Representatives of 18 September 2020 on further measures to tackle backlogs in the criminal justice system caused by coronavirus.

[3]: Letter to the House of Representatives of 26 June 2020 on the government's response to PwC's organisational analysis of the criminal justice system and the motion by C.J.L. van Dam et al.

[4]: According to page 8 of the Dutch country chapter of the EU rule of law report, 57% of Dutch respondents to the Eurobarometer survey indicate that they would not know where to report a case of corruption should they experience or witness it. However, this figure should be 32%, as stated on p. 121 of the Special Eurobarometer 502 (2020).

[5]: A bill to amend the Act in this respect is currently being considered by the Senate.

[6]: See, for example, the judgment of the Council of State of 10 June 2020 concerning article 6 ECHR (ECLI:NL:RVS:2020:1367) and the judgment of the Council of State of 16 January 2019 concerning article 10 ECHR (ECLI:NL:RVS:2019:100).

[7] Parliamentary paper 33826, no. 33.

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